

**REMARKS**

Favorable reconsideration of this application, in light of the following discussion and in view of the present amendment, is respectfully requested.

Claims 1-5 are pending.

Entry of Amendment under 37 C.F.R. § 1.116

The Applicant requests entry of this Rule 116 Response because: the amendments were not earlier presented because the Applicant believed in good faith that the cited references did not disclose the present invention as previously claimed; and the amendment does not significantly alter the scope of the claim and places the application at least into a better form for purposes of appeal.

The Manual of Patent Examining Procedures (M.P.E.P.) sets forth in Section 714.12 that "any amendment that would place the case either in condition for allowance or in better form for appeal may be entered." Moreover, Section 714.13 sets forth that "the Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." The M.P.E.P. further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

**I. Double Patenting Rejection**

In the Office Action, at page 2, numbered paragraph 2, claims 1-5 were provisionally-rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,897,626.

A Terminal Disclaimer is filed concurrently herewith. Accordingly, withdrawal of the nonstatutory obviousness-type double patenting rejection is respectfully requested.

**Conclusion**

In accordance with the foregoing, claims 1-5 are pending and under consideration.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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